



IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 30TH DAY OF JUNE 1998.

BEFORE

THE HON'BLE MR. JUSTICE CHIDANANDA ULLAL

W.P.NO. 5490/1994.

Between :

Sri. U.H.Mohammad,  
s/o. Haji Hassan Kunhi,  
aged about 71 yrs.,  
R/o. Halekote House,  
D.No. 14-32, Ullal village  
& Post, Mangalore, D.K.Dist.

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.. PETITIONER

(By Sri. Krishna for A.Keshava Bhat  
Adv. for petr.)

A n d :

1. Sri. U.h.Ibrahim,  
s/o. late Mohammad Mukri,  
major, R/o. D.No. 14-32,  
Halekote House, Ullal  
village & Post,  
Mangalore tq., D.k.Dist.

2. The Mangalore Taluk Land  
Tribunal, D.K. represented  
by its Secretary,  
Mangalore, D.k.

3. The State of Karnataka,  
represented by its Secy.,  
Dept. of Land Revenue,  
Vidhana Soudha, Bangalore.

.. RESPONDENTS

(By Sri. S.S.Guttal, HCGP for R.2 and R.3  
and Sri. Mohan Rao for Padubidri Raghavendra  
Rao for R.1.)

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This writ petition is filed praying to call  
for records and set aside the impugned order of the  
2nd respondent dt. 9-3-93 in LRT No. 444/79-80 vide  
Annexure 'A'.

This writ petition coming on for hearing and the same having been reserved for orders, the Court passed the following :

O R D E R

This writ petition is filed by the non-party tenant before the Land Tribunal to challenge the order dt. 9-3-93 in case No. LRT.444/79-80 passed by the respondent No. 2 - Land Tribunal, copy as at Annexure 'A' to writ petition.


2. I heard the learned Counsel for the petitioner Sri. Srikrishna appearing along with Sri. A.Keshava Bhat and the learned Counsel Sri. Mohan Rao appearing along with Sri. Padubidri Raghavendra Rao for the respondent No. 1. The respondent No. 2 - Land Tribunal and the respondent No. 3 - State are represented by the learned Government Pleader Sri. S.S.Guttal.

3. The brief facts adverted to by the Counsel for the petitioner relevant for our purpose are as follows :

That the petitioner and the respondent No. 1 herein and three other persons had claimed occupancy right as against the common landlord by name U.C.Krishna Moorthy Bhat of Mannagudde, Mangalore and the Land Tribunal by its earlier order

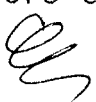


dt. 7-12-79 had granted occupancy right in respect of 18 cents of land in Sy.No. 47/11c as against his original claim of 19 cents in the said survey number, whereas the petitioner herein was granted with 23 cents as claimed by him in his Form No. 7. That the respondent No. 1 herein having found that there was some mistake occurred in the hands of the respondent No. 2 in the matter of mentioning the correct Sy.No. as 47/8B had shown the Sy.No. as 47/11C (as set out in his Form No.7) had moved the respondent No. 2 - Land Tribunal by an application before it for carrying out the said mistake and in the said application, the petitioner herein had made only the landlord as the necessary party to the said <sup>issue of the proceedings</sup> second ~~respondent~~ and after issue of notice to the landlord, the Land Tribunal entered into an enquiry and passed the impugned order only to correct the Sy.No. as above. The petitioner herein had filed the instant writ petition on the ground that the Land Tribunal did not get jurisdiction to pass such an order as the said mistake according to him was neither a clerical error nor an arithmetical mistake and further that the same was passed without notice and hearing the petitioner and therefore the same was in violation of the principles of natural justice.




4. While taking me through the facts of the case and urging the grounds in the writ petition, the learned Counsel for the petitioner Sri. Srikrishna submitted that the impugned order would not have been passed by the Land Tribunal without the petitioner being heard in the matter and further that the impugned order came to be passed by the Land Tribunal without there being any jurisdiction to pass the same when the Land Tribunal had earlier passed the order granting occupancy right. He had also cited before me a reported decision of a Division Bench of this Court in ILR 1994 Kar. 809 on the point that the amendment of the claim was impermissible without there being an amendment of the original From No. 7.

5. As against the above argument, the learned Counsel for the contesting respondent No. 1 Sri. Mohan Rao submitted that in passing the impugned order in the second round of proceedings, all that what the Land Tribunal did was to correct the bifurcated survey number to give effect to the original order of grant of occupancy right to the respondent No. 1. He had also argued that there was no reason for the petitioner to institute the instant petition before this Court, for the reason



that the extent of 23 cents that was claimed by the petitioner in the main survey number was very well conceded to by the original landlord. Sri. Rao had also cited before me in support of his argument the decision reported in AIR 1959 SC 577.

6. In the instant case in hand it is seen that an extent of 0.23 acres of land in Sy.No. 47/8 of Ullal village was originally the subject matter of tenancy proceedings before the respondent No. 2 Land Tribunal in No.LRT.444/79-80 and the Form No. 7 therein was originally applied for by Haji Hassan Kunhi, the father of the petitioner herein and that subsequently with the demise of the said applicant, Haji Hassan Kunhi, his L.Rs. including the petitioner herein were brought on record and that the joint tenancy was granted by the respondent No. 2 - Land Tribunal in the name of the said L.Rs. of the original applicant, Haji Hassan Kunhi and that that order had reached finality before the Appellate Authority in LRA(T) 153/1986 (MAN), a copy whereof has been produced here at Annexure 'B' to writ petition. ~~and~~ The said fact has not been disputed by the respondent No. 1, for he did not choose to file any objection statement as against the writ petition.




7. It appears that the respondent No. 1 originally applied for grant of occupancy right in respect of 0.19 acres in Sy.No.47/11C of Ullal village before the respondent No. 2 - Land Tribunal and the occupancy was granted by the respondent No. 2 - Tribunal as applied for by its considered order dt. 7-12-79 in LRT 444/79-80. It is argued by Sri. Mohan Rao, the learned Counsel for the respondent No. 1 that there was a mistake in setting out the Sy.No. in filing the Form No. 7 by the respondent No. 1 before the respondent No. 2 - Land Tribunal and that thereafter, it was found out by the respondent No. 1 that the Sy.No. was wrongly mentioned as 47/11C instead of Sy.No. 47/8 and therefore it was a necessity for the respondent No. 1 to apply for the correction of the said survey number and it is for that reason the respondent No. 1 had made an application dt. 7-12-79 before the respondent No. 2 - Land Tribunal as per copy as at Annexure 'D' to writ petition. It is also argued by Sri. Mohan Rao that all that the respondent No.1 did in filing the said application was only to ~~get the Sy. No. corrected~~ *get the Sy. No. corrected* ~~correct the said Form No. 7~~ *to give effect to the* order passed by the Land Tribunal earlier in favour of the respondent No. 1. It is further argued by



him that if that correction was made by the respondent No. 2 - Land Tribunal, there is nothing for the petitioner to be aggrieved with. But the said argument in my considered view cannot be accepted by this Court for the simple reason that the petitioner and the other sons of the original applicant Haji Hassan Kunhi was granted with occupancy right in respect of 0.23 acres of land in the very Sy.No. 47/8 by the respondent No. 2 Land Tribunal. If that is so, it cannot be said that the petitioner's interest is in any way not effected by passing the impugned order under challenge, particularly when it is nobody's case that the different extents of ~~land~~ <sup>lands were</sup> granted to the petitioner and his other brothers on the one side and the respondent No. 1 on the other <sup>by & this</sup> ~~was set~~ out in different schedules in respect of the respective portions of the land granted by the Land Tribunal.

8. Sri. Mohan Rao had also cited before me a reported decision of the Hon'ble Supreme Court in AIR 1959 SC 577. Having gone through the same, I do not think it has got any application for the case in hand.



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9. Therefore, I find every merit in the instant writ petition. In my considered view, the Land Tribunal would not have entertained and allowed the application dt. 7-12-79 filed by the respondent No. 1, copy as at Annexure 'D' to writ petition, firstly when the petitioner and his other brothers had been granted with occupancy right in respect of 0.23 acres of land in Sy.No. 47/8 in pursuance of the occupancy right originally applied for in Form No. 7 by their father Haji Hassan Kunhi and secondly that they were not at all heard in the matter when their interest in the granted land in the very survey number was effected.

10. In the result, I pass the following :

The impugned order dt. 9-3-93 in LRT 444/79-80, copy as at Annexure 'A' to writ petition is hereby quashed in allowing the writ petition. No cost.

mgn/-



Sd/-  
JUDGE